



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.218 OF 2024
(Sushama wd/o Ganesh Nandeshwar Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.S. Dhengale, Advocate for the applicant.
Mr. M.J. Khan, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 12, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail. The applicant is apprehending arrest at the hands of police in connection with Crime No.91/2024 registered with Police Station Gittikhadan, Nagpur, District Nagpur for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

3. The accusation against the present applicant is on the basis of report lodged by Onkar Laxman Gulwade alleging that in the year 1982 Moreshwar Bante, resident of Sitabuldi, Nagpur has entered into the partnership agreement for Mouza Beedipeth, Nagpur to purchase a land and to start the business of selling of the plots and for that purpose the society namely Jai Vignaharta Co-operative Housing Society Limited was formed. The

informant is a Chairman and Moreshwar Bante is a Secretary of the said society. From the year 1982 to 1999, the complainant was the Chairman and later on from 1999 to 2013 Shri Bhaskarrao Bhoyar was the President. After the death of Bhaskarrao Bhoyar again in the year 2013 the complainant become the Chairman of the society. During the year 1985 at Mouza Borgaon, Kh. No.24/1, 25/1 and 51/1 total area admeasuring 13 acres, 4 gunthas was purchased and said land was converted into the residential plot and said plots were declared for sale. At the relevant time, the preparation of layout map of the above mentioned land under the name of Vignaharta Society including 120 feet ring road was shown, running from the North-South. Thus, on the remaining land, the society carved out Plot No.169 admeasuring 13,000 sq. ft., Plot No.170 admeasuring 11,000 sq. ft. and Plot No.171 admeasuring area 5000 sq. ft. In the month of December 1999, three stamp papers of Rs.50/- was purchased from Stamp Vendor and on 06.12.1999 an agreement to sale of property No.169 was executed between the complainant and one Naresh Marotrao Dhawas and Vijay Nanaji Bhoyar. In the said agreement, allotment of plot was also demarketed and the complainant being the Chairman of the society could not sign his own agreement, and therefore, in the said agreement of sale of Property No.169, Shri Marotrao Dhawas signed the said agreement. It is further alleged that on 20.05.2017 a notice was received from Advocate on behalf of the present applicant

thereby asking for execution of sale-deed of Plot No.169 and 170. On due inquiry it reveals that the said agreement to sale is a forged document, and therefore, he approached to the police station and lodged the report.

4. Learned Counsel for the applicant submitted that in fact the husband of the applicant has entered into an agreement to the society to purchase the said plot. After the death of the husband of the applicant, she approached to the society for execution of the sale-deed but the Chairman of the society has declined to execute the said sale-deed, and therefore, she filed a Civil Suit bearing No.507/2018 before the Co-operative Court which is pending. He further submitted that now after filing of the Civil Suit in the year 2018 the first information report is lodged only to deny the execution of the sale-deed. The dispute between the society and the present applicant is of a civil nature and only to give the colour of the criminal litigation the alleged FIR is lodged. He further submitted that entire case is based on the documents. The applicant has cooperated with the investigating agency and had attended the police station. She has also furnished the relevant documents for the purpose of investigation, therefore, her custodial interrogation is not required. He placed on record various documents to show that the agreement of sale was executed in favour of her husband and therefore, the society is under obligation to execute the sale-deed in favour of her. It is further submitted on

behalf of the applicant that considering the entire investigation revolves around the documentary evidence, her custodial interrogation is not required, and therefore, the interim protection granted to her deserves to be confirmed.

5. Learned APP strongly opposed the said application on the ground that during the course of the investigation the non-applicant seized the agreement dated 25/07/1999. The statements of the witnesses of the aforesaid agreement are duly recorded and the further investigation is still in progress. It is further submitted by the learned APP that the applicant has not handed over the vital document relating to the agreement dated 25/07/1999 till date and due to the non-cooperation on the part of the applicant, the investigation is hampered. The present applicant and the co-accused have forged an agreement and are trying to take the illegal advantage of the same. The investigation carried out till date shows the involvement of the present applicant in the crime as she is the direct beneficiary of the alleged agreement to sell dated 25/07/1999. During the course of investigation it further revealed that offence bearing Crime No.219/2022 for commission of offence under Sections 420, 167, 467, 468 read with Section 34 of the Indian Penal Code is already registered against the stamp vendor namely Vikas Bhande from whom the general stamp of Rs.100/- was purchased. In order to ascertain the truth, the custodial

interrogation of the of the present applicant is required, and therefore, the application deserves to be rejected.

6. Learned Counsel for the applicant submitted that the FIR is lodged at a belated stage and placed his reliance on *Mahmood Ali and ors. Vs. State of U.P. and ors. In Criminal Appeal No.2341 of 2023*.

7. I have heard learned Counsel for both the parties. Perused the investigation papers. From the recitals of the FIR it reveals that as per the allegation, the complainant namely Onkar Gulwade lodged oral report alleging that in the year 1985 the society had purchased the agricultural land from Shri Dorlikar and layout consisting of 168 plots. Initially, a road was shown in the map but subsequently the same was cancelled and the society demarketed three plots on the area of the road. Said three plots were allotted to its members. The society received a notice dated 20/05/2017 issued by Advocate Bhande mentioning that to execute a sale-deed in respect of plot Nos.169 and 170 in favour of the present applicant. Thereafter on 31.07.2017, the present applicant made an application before the District Deputy Registrar, Cooperative Societies, Nagpur for execution of sale-deed in her favour. The informant appeared before the District Deputy Registrar, Cooperative Societies, Nagpur and received photocopy of sale and possession deed in respect of plot Nos.169 & 170. After perusal of the same, it revealed that he was not acquainted with Ganesh

Nandeshwar nor he sold any plot to him. However, the signatures of the informant and two witnesses made on the agreement appear to be correct. However, signatures of the informant and two witnesses were visible on the said document. The informant verified the record kept at society's office and realized that the agreement dated 25.07.1999 executed in the name of Kishor Dhawas in respect of plot No.70, Mouza Nari and a sale-deed in respect of Plot No.110 mouza Borgaon are missing. Since 2017, the present applicant and co-accused Ajaj Khan made complaints against the society. It further revealed that, bogus agreement to sale was prepared. Therefore, enquiry was made and it was further revealed that, Ajaj Khan and Pravin Devdhagale are the persons who are involved in the same. As per the allegation, in order to grab society's plots, these forged agreement to sale was shown to be executed in favour of husband of the present applicant.

8. During investigation, the investigating officer has recorded the statements of various witnesses including Vijay Nanaji Bhoyar, Rajkumar Nanaji Bhoyar, Churaman Narayan Starwa, Devcharan Vishram Sahu, Kishor Marotrao Dhawas, Swapnil Ramesh Zurmure and from their statements it revealed that said Ajaj Khan is involved in preparing the said agreement to sell which is a forged document. The statement of one Nakshatrabali Pyarelal Shahu also support the allegation which shows that said Ajaj Khan has brought the stamp papers and prepared

agreement to sell by adjusting the said stamp papers to write down the contents of the said agreement. The agreement to sell is also on record which shows that the earlier signature was scored and the name of the husband of the present applicant is mentioned in that. The investigation papers further shows that the disputed documents are forwarded to the Hand Writing Expert and he opined that, there was scoring in respect of the name and the signature of the person who signed the said document. As far as the forgery is concerned, the report shows that page No.4 now reading marked D2 is not the original page number. Thus, it shows that one page number is also attached which was not part of the original document. Initially, the applicant was protected by granting ad-interim anticipatory bail on condition that she should attend the police station and cooperate with the investigating agency. Though notice is issued to the present applicant but it appears that she has not cooperated with the investigating agency and has not handed over the document showing the specimen handwriting of her husband. Admittedly, the applicant is the beneficiary of the said forged document.

9. It is well settled that mere custodial interrogation is not required is not sufficient to grant the anticipatory bail to the applicant. Recently, the Hon'ble Apex Court in the case of ***Ashok Kumar Vs. State of Union Territory Chandigarh [2024 SCC OnLine SC 274]*** wherein it is held that there is no gainsaying that custodial

interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than *prima facie* why the custodial interrogation of the accused is required for the purpose of investigation. On perusal of the entire investigation papers it reveals that State has pointed out that there is a *prima facie* material against the present applicant. The present applicant in connivance with the other co-accused is involved in a forgery of the documents. There is no cooperation in the investigation from the present applicant. The entire land which belongs to the society and there is an attempt to grab the portion of the land with the assistance of the said forged documents. Considering the *prima facie* material against the present applicant and though she was directed to cooperate with the investigating agency after releasing her on interim anticipatory bail she appears to have not cooperated, and therefore, the ad-interim protection granted to the present applicant deserves to be cancelled. Though learned Counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court. The observation of the Hon'ble Apex Court on the basis of the evidence. Considering the

parameters laid down by the Hon'ble Apex Court in the cited decision and the facts of the present case and the facts of the cited case are not identical, and therefore, it is not helpful to the present applicant.

10. Considering the *prima facie* material against the present applicant, the application deserves to be rejected.

11. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*